

PETROLEUM TANK RELEASE COMPENSATION BOARD  
MINUTES  
Business Meeting  
June 26, 2006  
Department of Environmental Quality  
Metcalf Building Room 111, 1520 East 6<sup>th</sup> Avenue  
Helena, MT

Members in attendance were Theresa Blazicevich, Frank Boucher, Greg Cross, Shaun Peterson, and Frank Schumacher. Also in attendance were Terry Wadsworth, Executive Director, and Jonathan Krause, counsel filling in for the Board attorney.

Presiding Officer Cross called the meeting to order at 10:30 a.m.

Presiding Officer Cross stated that Thomas Bateridge will not be returning to the Board when his term expires on June 30, 2006. He noted that Frank Schumacher's term also expires on June 30, and that he has agreed to remain for another term. He thanked both gentlemen for their service.

**Approval of Actions Discussed in Executive Session**

Mr. Boucher moved to accept the settlement with Muralt Travel Plaza as presented during the executive session. Mr. Schumacher seconded. **The motion was unanimously approved.**

Mr. Schumacher moved to accept the settlement with Joe's Jiffy Shop as presented during the executive session. Ms. Blazicevich seconded. **The motion was unanimously approved.**

**Approval of Minutes**

Mr. Boucher noted that he was not in attendance at the May meeting, and the minutes should be corrected to remove him from the list of attendees.

Mr. Schumacher moved to accept the minutes of the May 1, 2006 Board meeting with the correction as noted by Mr. Boucher. Mr. Peterson seconded. **The motion was approved.**

**Amendment of ARM 17.58.326 & 17.58.336**

Mr. Wadsworth presented a summary of the changes to the rules covered by these amendments. The 2005 legislature amended and simplified the eligibility statute, and revised the reimbursement statute. As a result some of the references in the rules needed to be revised to refer to the appropriate section of the statute. The Board authorized the changes at its May meeting. The proposed rules were announced in the Montana Administrative Register. A hearing was held in early June. There were no attendees to the hearing and no written comments were received, except from the Board. The Board now needs to adopt the amendments to ARM 17.58.326 and 17.58.336.

Mr. Schumacher moved to accept the amendments as presented. Mr. Boucher seconded. **The motion was unanimously approved.**

**Eligibility - Torgison Oil, Fac ID #27-03804, Release # 3361, Libby**

Mr. Wadsworth presented a summary of the chronology of events at the site. There were two releases at the site. The first release, #2910, was declared ineligible in 1996 due to noncompliance. The current release is also not in compliance with eligibility requirements, specifically the applicable laws and rules. An inspection was conducted in 1993 indicating nine violations. There is no indication that the violations were corrected prior to the release occurring. The violations that were noted relate to weekly tank gauging, inventory control, daily records, monthly reconciliation and pipe tightness testing and monitoring.

Mr. Dan Torgison addressed the Board. He stated that Torgison Oil was dissolved in 1996. His father owned the company. In December 1996 the company became Torgison Inc. He is not disputing 1996 violations, because he was not part of the company at the time. After the company became Torgison Inc, they pulled eleven tanks from the property. Two heating fuel oil tanks were left to heat the gas station and the restaurant. The gas station became a casino, which Mr. Torgison has run ever since.

In 1998 the heating oil tanks were removed and replaced with propane tanks. The leak was found at that time. Everything they did at the time was done properly, including reporting, and cleanup. He has been told by his consulting firm that the 1998 release has nothing to do with the non-eligible status of the 1996 release. Everything from 1998 was done to the letter of the law.

Mr. Peterson noted that the violations were noted in 1993 but there is no evidence those violations were corrected.

Mr. Torgison stated that prior to 1996 he was not involved in the business and he has asked his father, who is 80 years old, about the prior violations. He did yearly pressure testing, but the heating tanks have not been pressurized that he knows of. He was never notified by the state that those heating oil tanks had to be pressurized. His consulting firm has recommended closure on his site.

Mr. Schumacher asked what the heating oil tank violations were. A representative of DEQ stated that there were violations of the inventory control and tank gauging requirements.

Mr. Wadsworth noted that residential heating oil tanks were de-regulated in 1995. However, this is a commercial facility and the laws requiring pressure testing and inventory control have been in effect since before 1995

Mr. Torgison stated that he finds it interesting that the state is pursuing him for petroleum contamination, when the entire city of Libby is a Superfund site. Also, when the tanks were removed in 1998, contaminated dirt was also removed and the hole filled in. In 2001 he received a letter saying that the land farm was fine. In 2005, seven years after the initial discovery, the state told him they wanted to drill on-site. In the meantime he has repaved the entire site and added onto the building, so he now has six holes through the new pavement. The aquifer under the Libby area is contaminated from Champion International. He wonders why the contamination he had is so important, in view of the larger picture. He has drilled six test wells and found one with small contamination.

Presiding Officer Cross suggested that Mr. Torgison have his consultant request closure of the site. Mr. Torgison indicated that is his consultant's intention. He reiterated that when he took over the site in 1998, no one from the state informed him that there were compliance issues outstanding. He believes he has operated according to the rules.

Mr. Schumacher empathized with Mr. Torgison's position and the difficulties he is facing. However, the State made steps to inform the owner/operator of violations, and no action was taken on those violations. Unfortunately, there are no grounds for granting eligibility.

Mr. Schumacher moved to accept the staff recommendation. Ms. Blazicevich seconded. **The motion was unanimously approved.**

### **Eligibility Ratification**

Mr. Wadsworth informed the Board of the eligibility applications before the Board. (See table below). He noted that the staff has asked two of the owners/operators to request reimbursement from an insurance carrier before seeking reimbursement from the Fund, one a third party carrier and one a delivery trucking company insurance.

Mr. Peterson moved to ratify the eligibility determinations contained in the eligibility table. Mr. Boucher seconded. **The motion was unanimously approved.**

Board Staff Recommendations Pertaining to Eligibility From March 30, 2006 thru June 15, 2006				
Location	Site Name	Facility ID #	DEQ Release # Release Month-Year	Eligibility Determination – Staff Recommendation Date
Molt	Former Kepferle Mercantile	48-01246	2282 Jul 1994	Eligible – April 26, 2006
Livingston	Kum & Go	34-11741	4471 Feb 2006	Eligible – May 8, 2006
Billings	Conomart Superstore #5	56-06967	4465 Jan 2006	Eligible – May 6, 2006

Table continued. . .

Board Staff Recommendations Pertaining to Eligibility From March 30, 2006 thru June 15, 2006				
Billings	NaRa Oriental Restaurant	56-13636	4483 Oct 2005	Eligible – May 24, 2006
Helena	Former McGaffick Service	25-01709	656 Jan 1991	Eligible – May 23, 2006
Clinton	Clinton Market	32-02902	4350 July 2005	Eligible – May 31, 2006
Whitefish	Whitefish Title Services	99-95009	4419 June 2004	Eligible – May 31, 2006
Ronan	Carole Reum residence	99-95011	4421 June 2005	Eligible – May 30, 2006 (Insurance)
Kalispell	City Service West	15-02330	1047 Dec 1991	Eligible – June 8, 2006 (Insurance)
Billings	Former Main Street Standard Service	99-95028	4484 Mar 2006	Eligible – June 15, 2006
Laurel	Johnson Ford	56-00134	4480 Mar 2006	Eligible – June 15, 2006

### **Claims over \$25,000**

Mr. Wadsworth presented the Board with the claims for an amount greater than \$25,000 reviewed since the last Board meeting. (See table below). There are five claims totaling \$104,232.59. He noted that one claim was denied because the work was not done with an approved corrective action plan. A structure was removed, but the removal was not part of the approved plan.

Ms. Blazicevich moved to accept the claims over \$25,000. Mr. Boucher seconded. **The motion was unanimously approved.**

Location	Facility Name	Facility ID#	Claim #	Claimed Amount	Reimbursed
Kalispell	Manions Implement Dealership	15-04503	20060308A	\$28,769.87	\$27,394.87
Great Falls	Cascade County Road & Bridge	07-05708	20060327M	\$29,835.96	\$19,905.72
Great Falls	Cascade County Road & Bridge	07-05708	20060327N	\$27,202.30	\$17,435.48
Bozeman	Interstate 90 Exxon	16-08190	20060420F	\$42,066.00	0.00
Ennis	Bohrman Exxon	28-11350	20060510F	53,752.50	\$39,496.52 Co-payment met with this claim
<b>Total</b>					<b>\$104,232.59</b>

Presiding Officer Cross commented that there are times when removal of a structure is the most cost effective way to effect cleanup, and that members of the industry must be sure to have that action included in their work plan and approved by the Department if the costs are to be reimbursed.

### **Weekly Reimbursements**

Mr. Wadsworth presented the Board with the summary of weekly claim reimbursements for the weeks of April 26, 2006 through June 14, 2006 for Board ratification. (See table below). There were 265 claims, totaling \$736,770.19. One claim was denied in its entirety.

Mr. Schumacher abstained from voting on any claims related to Mountain View Coop.

Mr. Boucher moved to approve the weekly claim reimbursements. Mr. Peterson seconded. **The motion was unanimously approved.**

<b><u>WEEKLY CLAIM REIMBURSEMENTS</u></b> <b>June 26, 2006 BOARD MEETING</b>		
<b><u>Week of</u></b>	<b><u>Number of Claims</u></b>	<b><u>Funds Reimbursed</u></b>
April 26, 2006	21	\$60,333.89
May 17, 2006	39	\$124,829.29
May 24, 2006	39	\$111,278.98
May 31, 2006	59	\$129,152.05
June 7, 2006	59	\$197,611.77
June 14, 2006	48	\$113,564.21
<b>Total</b>	<b>265</b>	<b>\$736,770.19</b>

Presiding Officer Cross restated the Board's desire to keep corrective action costs down and reduce expenditures, as the Board's available budget continues to be challenged.

#### **Biennial Report to Legislative Auditor and DEQ Director**

The 2005 Legislature enacted a requirement that the Board provide a biennial report to the Director of DEQ and the Legislative Auditor by July 1. Mr. Wadsworth provided the Board with a summary of the information he plans to include in the first report. The staff will send a draft on June 30, and request input from the Auditor and the Director and their staffs. He anticipates that a final report will be available for the Board to review by the August Board meeting.

The report will include evaluations of trends in revenues and expenditures, evaluation of long-term liabilities, possible impacts of changes to state and federal regulations, a review of developments in the commercial petroleum storage tank liability insurance sector, and a discussion of the Petroleum Tank Release Cleanup Fee.

#### **2007 Legislative Proposals**

Mr. Wadsworth presented items that have been discussed for proposed legislation. These included revisions to §75-11-309, MCA, which requires "immediate" notification of a release; whether a fee increase should be requested, and if so, the proposed increase; insurance requirements and adjusting co-payments; and a proposal for a time limit for eligibility applications.

A draft of proposed legislation must be available by the August 21.

Sandi Olsen, Division Administrator, informed the Board that the Department must report to the EQC any legislation the Department intends to propose for the coming legislative session. The language does not have to be finalized by then, but a place-holder needs to be in place. There are only three Board meetings available before the session begins, and time is of the essence. If the Board is proposing legislation, the proposal will need to be implemented as part of the Department's Executive Planning Process.

Presiding Officer Cross stated that an understanding of the Department's requirements for site clean-up would help the Board determine how to limit its potential liabilities.

Ms. Olsen noted that the Department is not proposing any major changes to clean-up requirements, but is attempting to make administrative changes that will facilitate reaching closure in a more organized and timely fashion. This effort will affect closure rates, but will not affect the number of sites that are in need of remediation. DEQ Circular 7 will remain the clean-up standard.

Presiding Officer Cross stated that there needs to be an evaluation of the entire leak determination process to allow for less expenditure for investigation and more in actual cleanup.

### **Fund Solvency Subcommittee Report**

Mr. Wadsworth addressed the draft travel policy, which will limit the number of miles for which a consultant will be reimbursed from the Fund. The Committee suggested sending the draft policy to interested parties for comment. The Board instructed Mr. Wadsworth to send the draft out for comments.

### **Fiscal Report**

Mr. Wadsworth presented the Board with the current Fiscal Report.

On the financial report, Mr. Schumacher noted claims paid in May are almost double the amount paid in prior months. Mr. Wadsworth explained that the May number includes \$325,000 in claims over \$25,000 approved at the May Board meeting.

Mr. Wadsworth noted that the subrogation program is now running in the black.

### **Board Attorney Report**

Jonathan Krause represented the Board in the absence of Paul Johnson. He noted the only change in case status is that the Isle Oil case in Wolf Point has been completed and will be removed from the table. The Town Pump case record has been delivered to the Court and is now awaiting judicial review. He is not aware of an anticipated timeline.

ATTORNEY REPORT				
Location	Facility	Facility # & Release #	Disputed/ Appointment Date	Status
Boulder	Old Texaco Station	22-11481 Release #03138	Eligibility 11/25/97	Dismissal Pending because cleanup of release completed.
Thompson Falls	Feed and Fuel	45-02633 Release # 03545	Eligibility	Case was stayed on 10/21/99.
Eureka	Town & Country	27-07148 Release #03642	Eligibility 8/12/99	Hearing postponed as of 11/9/99.
Helena	Allen's Oil Bulk Plant	25-01025 Release #02893	Eligibility 11/29/99	Case was stayed on 1/21/00.
Butte	Shamrock Motors	47-08592 Release #03650	Eligibility 10/1/99	Case on hold pending notification to Hearing Officer.
Whitefish	Rocky Mountain Transportation	15-01371 Release #03809	Eligibility 9/11/01	Ongoing discovery. No hearing date set.
Lakeside	Lakeside Exxon	15-13487 Release #03955	Eligibility 11/6/01	In discovery stage.
Helena	Noon's #438	25-03918 Release # 03980	Eligibility 2/19/02	Case stayed.
Belt	Mary Catherine Castner	07-12039	Eligibility 11/22/02	Case stayed.
Belt	Main Street Insurance	07-01307 Release #3962		Eligibility tabled 6/25/01
Great Falls	Cascade County Shop	07-05708 Release # 3051	Eligibility –contested 4/17/98	Hearing Examiner appointed, however determined eligible 6/8/99
Wolf Point	Isle Oil		Disputed claims	Completed
Brady	Brady School	37-02704 Release #3171	Eligibility – contested 2/5/98	Hearing Examiner appointed, however determined eligible 3/9/98
Dillon	Town Pump #1	01-08695 Release #4144	Eligibility – contested 03/07/05	Judicial review – record delivered to Court

### **Board Staff Report**

Mr. Wadsworth presented the Board staff report. He noted that there are 29 pending eligibilities, several of them a number of months old. He explained that many of the older applications had been awaiting a determination in the Town

Pump Dillon hearing. Since that hearing is now complete, those eligibilities have moved forward and several of them were being ratified at the current meeting.

Mr. Wadsworth stated that a comparison OF the dollar value of fiscal year 2005 work plans reviewed with the dollar value of fiscal year 2006 work plans reviewed shows the two years to be comparable. He noted, however, that the staff has many work plans in process that have not been reviewed, and he anticipates that the 2006 work plan total would be significantly greater if all the work plans had been reviewed.

Mr. Schumacher asked if there was any insurance coverage for the clean-up at the Christensen Site in Big Arm, and whether the soil excavation had succeeded in cleaning up the site. Mr. Trombetta said the excavation was still on-going, and that he would bring a report to the August Board meeting.

### **Petroleum Release Section Report**

Mr. Trombetta noted that 48% of newly discovered releases are historical contamination with an unknown cause. Many of them have been discovered as a result of property transfers.

He gave a brief summary of clean-up efforts at the Hair Station, noting that dig-out of contaminated soils was the most effective work done to date. However, the remaining contamination cannot be removed until the building is demolished, so other technologies are being tried.

### **Public Forum**

Ronna Alexander, Petroleum Marketers Association, initiated a discussion of the intent of the proposed legislation to revise §75-11-309. The discussion clarified that the intent is to require notification of a release, to use the Department's rules regarding deadlines, and to provide the Board flexibility in imposing sanctions on those who do not meet the Department's deadlines.

The next scheduled Board meeting is August 21, 2006, in Room 111 of the Metcalf Building, 1520 East 6<sup>th</sup> Avenue, Helena, MT.

Meeting adjourned at 1:02 p.m.

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Greg Cross - Presiding Officer